



Development of A New Rule Concerning Combined Sewer Overflow Public Notification

LSA Document #00-136

Overview

The Water Pollution Control Board (board) preliminarily adopted a rule on April 10, 2002, in response to Public Law 140-2000, SECTION 23, enacted by the General Assembly in July 2000, concerning community notification by National Pollutant Discharge Elimination System (NPDES) permit holders of the potential health impact of combined sewer overflows (CSOs). This proposed rule is to be presented to the board on January 8, 2003, for consideration of final adoption. This rulemaking also includes amendments to 327 IAC 5-2-9 to correct a citation in the section and to reformat it according to the manner currently used in state rule writing.

Citations Affected

This rulemaking amends: 327 IAC 5-2-9 and adds 327 IAC 5-2.1.

Affected Persons

This rule will affect communities that are National Pollutant Discharge Elimination System (NPDES) permit holders and have one or more combined sewer overflow outfalls into waters of the state.

Reason(s) for the Rule

This rulemaking has been undertaken pursuant to P.L.140-2000, SECTION 23, which requires the Water Pollution Control Board to adopt a rule to establish requirements for community notification by NPDES permit holders of the potential health impacts of CSOs whenever information from a reliable source indicates that a discharge is occurring or there is a reasonable likelihood that a discharge will occur within the next twenty-four (24) hours.

Economic Impact of the Rule

IDEM believes the economic impact of this rule will not be significant because the rule requirements are consistent with the previously established federal requirements of the federal CSO Control Policy, that

requires public notification to ensure the public receives adequate notification of CSO occurrences and CSO impacts, and with EPA's 1995 guidance document, Combined Sewer Overflows Guidance for Nine Minimum Controls.

Benefits of the Rule

This rule is intended to safeguard the public's health and give warning to persons who likely may come into contact with waterbodies contacted by combined sewer overflow.

Description of the Rulemaking Project

A rulemaking workgroup was formed and workgroup meetings were held beginning in the summer of 2001. The workgroup was comprised of representatives of CSO communities, Indiana Association of Cities and Towns, Hoosier Environmental Council, and Improving Kids' Environment, the organization that was wholly instrumental in the passage by the 2000 General Assembly of the requirement for this rulemaking. Several workgroup meetings were held to discuss various draft versions of the rule in order to achieve a consensus on a draft rule that meets the legislative requirements and provides protective notification to the public without being unreasonably burdensome on the affected CSO communities.

The Water Pollution Control Board, in giving preliminary adoption to the draft rule in April 2002, instructed IDEM to continue to work with interested parties to resolve issues that were commented on by the public and discussed by the board at the preliminary adoption hearing. IDEM conducted additional workgroup meetings in June and October 2002 to achieve agreement on revisions to the preliminarily adopted rule.

Scheduled Hearings

First Public Hearing: April 10, 2002, at the WPCB meeting held at the Indiana Government Building South.

Second Public Hearing: January 8, 2003, at the WPCB meeting held at the Indiana Government Building South.

Consideration of Factors Outlined in Indiana Code 13-14-8-4

Indiana Code 13-14-8-4 requires that in adopting rules and establishing standards, the board shall take into account the following:

- 1) All existing physical conditions and the character of the area affected.
- 2) Past, present, and probable future uses of the area, including the character of the uses of surrounding areas.
- 3) Zoning classifications.
- 4) The nature of the existing air quality or existing water quality, as appropriate.
- 5) Technical feasibility, including the quality conditions that could be reasonably be achieved through coordinated control of all factors affecting the quality.
- 6) Economic reasonableness of measuring or reducing any particular type of pollution.
- (7) The right of all persons to an environment sufficiently uncontaminated as not to be injurious to:
 - (A) human, plant, animal, or aquatic life; or
 - (B) the reasonable enjoyment of life and property.

Consistency with Federal Requirements

This new rule is strictly of state origin though it has ties to federally required rulemakings concerning control and elimination of combined sewer

overflows and the long term control plans required to guide communities toward achieving those goals.

Rulemaking Process

The first step in the rulemaking process is a first notice published in the Indiana Register. This includes a discussion of issues and opens a first comment period. The second notice is then published which contains the comments and the department's responses to comments from the first comment period, a notice of first meeting/hearing, and the draft rule. The Water Pollution Control Board holds the first meeting/hearing and public comments are heard. The proposed rule, also known as the preliminarily adopted rule, is published in the Indiana Register after preliminary adoption along with a notice of second meeting/hearing. If the proposed rule is substantively different from the draft rule, a third comment period is required. The second public meeting/hearing is held and public comments are heard. Once final adoption occurs, the rule becomes effective 30 days after filing with the Secretary of State.

IDEM Contact

Additional information regarding this rulemaking action can be obtained from MaryAnn Stevens, Rules Section, Office of Water Quality, (317) 232-8635, Reggie Baker, Urban Wet Weather Section, Office of Water Quality, (317) 233-0473, or (800) 451-6027 (in Indiana).